IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2158 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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NATIONAL INSURANCE COMPANY - Petitioner(s)
Versus
SAVITA MUKESH VAGHARI & 2 - Respondent(s)

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Appearance :
MR DAKSHESH MEHTA for Petitioner(s) : 1,
MS TEJAL K SHAH for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 01/03/2007

ORAL JUDGMENT

1. Rule. The learned advocate for the respondents will waive the service of Rule.

2. National Insurance Company, petitioner has filed this petition with a prayer that this Court may be pleased to issue writ for quashing and setting aside the order dated 7/1/2005 passed by the learned Judge of the Motor Accident Claims Tribunal, Gandhidham below Exh.18 in M.A.C.P. No. 236 of 2004. The learned Judge by his impugned order held that:

> "Heard Mr.K.M.Ganatra, Ld. Advocate for the insurance company and Mr.A.G.Solanki, Ld. Advocate for the Claimant. I have gone through the decisions cited in the present application. Normally all the joint tortfeasors should be joined as a party to the petition and when one tortfeasors applied to join joint tortfeasors as party, the tribunal must grant such application. In the present case, on perusal of FIR, it is crystal clear that the accident occurred due to sheer negligence on the part of Chhakdo Auto Rikshow No.GJ-12-V-957 and therefore, driver, owner and the insurer of Dumper NO.GJ—9T-9020 cannot

be said to be joint tortfeasors. Hence, they are not necessary parties to the petition."

3. The facts giving rise to this petition are as under:

3.1) Savita Mukesh Vaghri, respondent no.1 is original claimant who has filed Motor Accident Claims Petition No.236/2004 before the Motor Accident Claims Tribunal, Gandhidham, claiming compensation of Rs.7,20,000/- under Section 163-A of the Motor Vehicles Act, 1988 on account of death of her husband, Mukeshbhai Ratnabhai who was travelling in Rickshaw carrier No.GJ-12-V-7957 when the Rickshaw carrier dashed with the truck No.GJ-9-T-9020 resulting that the deceased stumbled to the injuries. Mr.Daxesh Mehta, learned advocate for the petitioner has invited my attention to the copy of the Claim Petition which has been annexed with the petition.

3.2) It is further stated that First Information Report regarding the said accident was filed before the Anjar Police Station being FIR No.

CR.I.133/2004.

3.3) It is also submitted that as the claimant has not joined the driver, owner and the insurer of the Truck No.GJ-9-T-9020, the application to join them as parties was filed by the petitioner-National Insurance Company on 13/12/2004. The National Insurance Company has stated in the application that the applicant may be directed to join the owner and insurer of vehicle No.GJ-9-T-9020 in the claim petition and the No Fault Liability application in view of the certain judgments.

3.4) The learned Judge by impugned order dated 7/1/2005, pleased to reject the said application on the ground that accident occurred due to sheer negligence on the part of Chhakada and therefore, driver, owner and the insurer of Dumper No.GJ-9-T-9020 cannot be said to be joint tortfeasors.

3.5) Being aggrieved and dissatisfied with the said judgment, the petitioner has filed this Court on 9/2/2005.

4. The matter is placed for hearing from time to time. This Court has passed an order on 18/2/2005 and issued Rule. With consent of the parties, now matter is taken up for final disposal.

5. Mr.Daxesh Mehta, learned advocate for the petitioner has stated that in view of the present facts and circumstances of the case, both the driver and owner and insurer of the Dumper are also necessary and proper parties in this behalf and the finding of the learned Trial Judge is not legal, valid and correct. In support of the same, he has relied upon the Division Bench judgment of this Court in the case of New India Assurance Co. Ltd. v. Muna Maya Basant and another reported in 2001 ACJ 940 where in para 20, this Court has held as under:

> “20. It is the contention of Ms.Bhaya representing the appellant in First Appeal No.318 of 2000 that all the tortfeasors are not joined. Consequently, the possibility of mischief on the part of the claimant for claiming the compensation again preferring the petition before another competent Tribunal against the tortfeasor not joined here, cannot be ruled out. The appeal on its count, may, therefore, be dismissed. The contention cannot

be accepted, in view of the decision rendered by this court in the case of Gujarat State Road Trans. Corpn. v. Gurunath Shahu, 1989 ACJ 314 (Gujarat), wherein it is held that where there are more than one tortfeasors technically a claim petition against one of the tortfeasors is not bad, but it is desirable that the Tribunal will not adopt the easy course which may quickly dispose of the matter. Such disposal gives rise to other litigations. Therefore, whenever a plea for joining another joint tortfeasor is raised and prayed for, it would be better for the Tribunal to insist that all the tortfeasors are brought on record. If the application for joining party is submitted, the tribunal will have to allow such application and join another tortfeasor. In view of such decision, if one of the tortfeasors is left out, either of the parties can move the Tribunal for his joinder and in that case, the Tribunal will have to allow the application and join the left-out tortfeasor as the opponent so that there may not have any scope for fresh or more litigations, or a mischief on the part of the claimant for claiming the amount again, but if that is not done and for one or the other reason, the tortfeasor is not joined and the award is passed, the insurer or the party who is ordered to pay may when comes to know about the application for compensation is filed against another tortfeasor for compensation, raise the dispute and bring it to the notice of the Tribunal about the earlier award having been passed; or if the claimant has obtained the amount more, keeping all in dark, he will in that case be directed to pay the amount back to the concerned party together with interest, as and when the mischief comes to be known."

6. The aforesaid judgment of the Division Bench is also considered by this Court (Coram:K.M.Mehta, J.) in the order dated 30/6/2003 in the case of

National Insurance Company v. Hajra Abdul and others in Civil Revision Application No.1275 of 2002.

7. So far as Ms.Tejal K. Shah is concerned, she has relied upon the order of the learned Motor Accident Tribunal and relied upon the judgment of Rajastjan High Court in the case of Vimla v. Moolchand and others, reported in III (2005) ACC 72 and also order of the learned Trial Judge.

8. I have considered the facts and circumstances of the case. I have also considered the order of the learned Trial Judge in this behalf. I have also considered the Division Bench Judgment of this Court in the case of New India Assurance Co. Ltd. v. Munna Maya Basant and another and also considered the decision of this Court in the case of National Insurance Company v. Karimaben Hasam in Civil Revision Application No.1274 of 2002 dated 30/6/2003 in which the aforesaid Division Bench judgment is referred.

9. In view of the judgment of the Division Bench of

this Court, the driver and owner and insurer of truck in question are necessary and proper parties at this stage. Reliance placed by the learned counsel for the respondent on Rajasthan High Court judgment is not applicable to the facts and circumstances of the case. In view of the same, order of the learned Tribunal dated 7/1/2005 is not legal and valid. The said order is required to be quashed and set aside.

10. In view of the same, the learned Trial Judge is requested to now hear and dispose of the claim petition No. MACP No.236 of 2004 pending before Motor Accident Claim Tribunal as expeditiously as possible but not later than 31/7/2007 in accordance with law. Interim relief granted earlier is to be vacated.

11. Therefore, petition is allowed. Rule made absolute accordingly.

(K.M.MEHTA, J.)

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